

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 95808)
(916) 445-6414



WILLIAM M. BENNETT
First District, Kentfield

CONWAY H. COLLIS
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

RICHARD NEVINS
Fourth District, Pasadena

KENNETH CORY
Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary

April 14, 1987

Dear

Re: Transfer of Property to Ex-Spouse

This is in response to your request for our advice on whether a transfer of real property from B to J her ex-husband, constitutes a reappraisable transfer, or whether it is excluded from change in ownership as an interspousal transfer. The facts as outlined in your letter are as follows:

On February 25, 1977, then husband and wife, purchased the property consisting of approximately 77 acres and referred to as the Place. A new house was built on the property in 1977 and appraised as new construction for 1978. On November 17, 1977, the parties agreed to separate and entered into a Marital Settlement Agreement. An Interlocutory Judgment of dissolution of marriage was entered on January 25, 1979.

Paragraph 6, item 4 of the Marital Settlement Agreement lists Airport Place as community property. Paragraph 7 A(1) of the Agreement grants to as her separate property a "life estate in the resident place or at any time that she removes herself from the place whichever occurs first." Paragraph 7 B(4) grants Place to as his separate property "subject to life estate/or earlier removal in residence home to the wife."

On April 3, 1986, a grant deed was recorded in which granted Place to as his sole and separate property. The deed states that: "THIS DEED IS GIVEN TO TERMINATE THE LIFE ESTATE AS SET FORTH IN DEED RECORDED DECEMBER 29, 1977." You ask whether this transfer is a reappraisable termination of a life estate or if it is excluded as an interspousal transfer under section 63 of the Revenue and Taxation Code.

April 14, 1987

Revenue and Taxation Code section 63 provides that

"a change in ownership shall not include any interspousal transfer, including, but not limited to:

(c) Transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation."

Therefore, the issue raised is whether the transfer of Place from to is a transfer to a former spouse "in connection with a property settlement agreement." It is our opinion that it is.

The Marital Settlement Agreement specifically grants to as her separate property an estate for life or an estate until "she removes herself from the place whichever occurs first." The Marital Settlement Agreement further grants to the Place property subject to his wife's estate. Therefore, under the Marital Settlement Agreement, is granted a remainder interest in the property as his separate property. Because the terms of the subsequent transfer were set out in the 1977 Marital Settlement Agreement, it is our opinion that the transfer is "in connection with a property settlement agreement."

In your letter, you ask us for our opinion on two additional questions concerning interspousal transfers in general. The first concerns the application of Rule 462(1)(3). Rule 462(1)(3) provides that "a change in ownership shall not include any interspousal transfer, including, but not limited to:

"(3) Transfers to a spouse or former spouse in connection with a property settlement agreement, including post-dissolution amendment thereto, or decree of dissolution of a marriage or legal separation."

You ask if a post-dissolution amendment has to be affirmed by the court or if it can be an agreement between ex-spouses.

A decree dividing community property is not subject to modification after it has become final. (In Re Marriage of Shanahan (1979) 95 Cal.App.3d 295, 297.) After the trial court has divided the property and the judgment has become final, the court loses jurisdiction to modify or alter the division made.

April 14, 1987

Thus, with respect to property, the property settlement approved by the court, entered in the judgment, and final by a lapse of time for review, is not subject to modification. (6 Witkin Summary of California Law 5058 (8th ed. 1974).) An exception to this rule arises in cases where the court expressly reserves jurisdiction to modify a property award. (Mueller v. Walker (1985) 167 Cal.App.3d 600, 605-606.) Based on the foregoing well-established case law, it is our opinion that unless the court has expressly reserved jurisdiction to modify a property award, or unless the parties themselves in their property settlement expressly reserve the right to modify the property settlement agreement, and if it appears to have been the intention of the parties to the property settlement agreement to definitely and permanently adjust their property rights, a subsequent transfer is not in connection with a property settlement agreement. Of course, the parties may subsequently make any agreement they wish, but since they are no longer married and their rights have already been fully settled, such a transfer is not in connection with the dissolution of their marriage.

Lastly, you ask the following question which was posed by your staff concerning interspousal transfers:

"The judge says that at the end of X years the property is to be sold, neither one gets the house. At the end of that time, they decide between themselves that one will sell to the other. Non-reappraisable? Reappraise 100%, 50%?"

The situation you describe generally involves a family home award pursuant to Civil Code section 4800.7. Civil Code section 4800.7 provides in pertinent part as follows:

"(a) As used in this section, 'family home award' means an order that awards temporary use of the family home to the party having custody of minor children and children for whom support is authorized under Section 206 in order to minimize the adverse impact of dissolution or legal separation on the welfare of the children.

(b) Except as otherwise agreed to by the parties in writing:

(1) A family home award may be modified or terminated at any time at the discretion of the court."

April 14, 1987

Whenever a court grants a temporary home award of community property, the noncustodial spouse's property rights under Civil Code section 4800(a) are delayed temporarily. Section 4800(a) grants the parties in a dissolution proceeding the right to an equal division of community property at the time of dissolution. The trial court's order often provides for the termination of a family home award on the following contingencies: (1) when the children reach the age of majority; or (2) when the custodial spouse remarries or otherwise brings added income to the home. Obviously, an extensive period of time could pass before these contingencies occur which would delay the noncustodial spouse's right to equal division of community property rights. (In Re Marriage of Howard (1986) 184 Cal.App.3d 1, 8.)

Under section 4800.7(b), the court expressly retains the jurisdiction to modify or terminate the family home award. Therefore, until the family home award is terminated by the court, its division as community property is not settled and final. It is our opinion, therefore, that a transfer between the spouses occurring before the property rights pertaining to the house are settled, should be excluded as an interspousal transfer.

To summarize the foregoing, it is our opinion that when (1) either the parties through an agreement, or, (2) the court through retained jurisdiction, has left a property matter open or modifiable, then a transfer between ex-spouses will be considered within the interspousal exclusion. However, where it appears to have been the intention of the parties to definitely and permanently settle their property rights and a decree of dissolution has become final, any subsequent transfers are transfers of separate property between unmarried parties and are not interspousal transfers.

I hope the foregoing analysis is helpful to you. If you have any questions or if you wish to discuss this further, please contact me.

Very truly yours,

Michele F. Hicks

Michele F. Hicks
Tax Counsel

MFH:cb
0464D

STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
TELEPHONE (916) 324-2642
FAX (916) 323-3387



JOHAN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

BRAD SHERMAN
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

E. L. SORENSEN, JR.
Executive Director

March 11, 1996

Re: Interspousal Transfer

Dear Mr. :

In response to your letter of January 11, 1996 and your follow-up telephone call of February 14, 1996 where you provided a further summary, you have presented the following fact situation:

1. Title to the above parcel was initially held as follows:

- a. One-half interest held by E (AKA) ; and
- b. One-half interest held by J (husband) and A (AKA) (wife).

2. A marriage settlement agreement was made by husband and wife pursuant to a court ordered Judgment entered on February 8, 1989. Paragraphs 5 and 12 of the marriage settlement agreement state:

5. Husband further agrees to execute and deliver to Wife a trust deed against his interest in the real property commonly known as , California to secure his obligations described in paragraph 12 of this agreement. . . .

* * *

March 11, 1996

12. Husband agrees to pay the following debts and to hold Wife harmless therefrom:

(1) All obligations owed by or incurred by the community for the benefit of Corporation of American, Inc. including but not limited to the following:

* * *

3. Wife subsequently acquired husband's interest in the property and the county assessor reassessed the parcel as of March 1, 1994 based on "a reappraisal caused by a partial transfer of ownership on 09/09/93."

You state in your letter that:

The above mentioned transfer of ownership occurred through a foreclosure due to spousal & child support payments not being made. These procedures were as per the divorce decree.

You have submitted a number of documents related to the above transactions, including the Judgment and a portion of a marriage settlement agreement. None of those documents refer to spousal and/or child support payments or foreclosure in the event such payments are not made. If this matter is reconsidered by the county assessor, it will be necessary for you to produce additional documentation to show the connection between the foreclosure and the Judgment or marriage settlement agreement.

Your question is whether a reassessment based on the described transfer between the former spouses is appropriate. If the transfer was made between the former spouses pursuant to the marriage settlement agreement or court decree, the interspousal exclusion should apply.

LEGAL ANALYSIS

Revenue and Taxation Code section 60 provides:

March 11, 1996

A "change in ownership" means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.

A change of ownership after 1975 generally results in a reassessment of the property transferred pursuant to section 2, subdivision (a) of Article XIII A of the California Constitution. However, subdivision (g) (3) of section 2 of Article XIII A exempts from "change in ownership" those "transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation." (Emphasis added.) Revenue and Taxation Code section 63, subdivision (c) codifies section 2, subdivision (g) (3).

Property Tax Rule 462.220 (copy enclosed) provides for this same exclusion and states:

[. . . a change in ownership shall not include any interspousal transfer, including, but not limited:]

(c) Transfers to a spouse or former spouse in connection with a property settlement agreement, including post-dissolution amendment thereto, or decree of dissolution of a marriage or legal separation, . . .

As stated above, you have provided certain information regarding the marriage settlement agreement and court decree, but you did not submit documentation to show the basis for the subsequent foreclosure of the husband's interest in the property to the wife or the connection between the transfer and the divorce proceedings. Therefore, we will respond to your question in a general way; again, it will be necessary for you present additional documentation to the county assessor when presenting your case.

Based on the above cited legal authorities, the exclusion commonly called the "interspousal exclusion" extends to transfers between former spouses when such a transfer is made in connection with a property settlement agreement or decree of dissolution. The term "in connection" is a somewhat vague and broad term. Although not free of doubt, it has been our opinion that any transfer made in connection with a property settlement agreement,

March 11, 1996

including post dissolution amendment, or a decree of dissolution is not subject to reappraisal because of the interspousal exclusion.

You have described the subject transfer as being based on foreclosure proceedings related to husband's failure to pay spousal and child support. This basis does not appear to relate to the portion of paragraph 5 of the marriage settlement agreement which you submitted. We are aware, of course, that obligations to pay spousal support and child support are frequently included in marriage settlement agreements and/or decrees of dissolution. If you can provide evidence connecting the foreclosure or other transfer of the subject parcel with the marriage settlement agreement or court decree, the interspousal exclusion should apply. As we have not had opportunity to review such evidence, we offer no opinion as to the outcome of your case.

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the assessor of any county.

Our intention is to provide courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Janet Saunders
Staff Counsel

JS:jd

precednt/intersp/1996/96001.js

Attachment

cc:

Mr. Jim Speed, MIC:63
Mr. Dick Johnson, MIC:64
Ms. Jennifer Willis, MIC:70

RECEIVED

MAR 12 1996

PROP. TAX ADMIN.
State Board of Equalization

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 95808)
(916) 445-6414



WILLIAM M. BENNETT
First District, Kentfield

CONWAY H. COLLIS
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

RICHARD NEVINS
Fourth District, Pasadena

KENNETH CORY
Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary

April 14, 1987

Dear

Re: Transfer of Property to Ex-Spouse

This is in response to your request for our advice on whether a transfer of real property from B to J her ex-husband, constitutes a reappraisable transfer, or whether it is excluded from change in ownership as an interspousal transfer. The facts as outlined in your letter are as follows:

On February 25, 1977, then husband and wife, purchased the property consisting of approximately 77 acres and referred to as the Place. A new house was built on the property in 1977 and appraised as new construction for 1978. On November 17, 1977, the parties agreed to separate and entered into a Marital Settlement Agreement. An Interlocutory Judgment of dissolution of marriage was entered on January 25, 1979.

Paragraph 6, item 4 of the Marital Settlement Agreement lists Airport Place as community property. Paragraph 7 A(1) of the Agreement grants to as her separate property a "life estate in the resident place or at any time that she removes herself from the place whichever occurs first." Paragraph 7 B(4) grants Place to as his separate property "subject to life estate/or earlier removal in residence home to the wife."

On April 3, 1986, a grant deed was recorded in which granted Place to as his sole and separate property. The deed states that: "THIS DEED IS GIVEN TO TERMINATE THE LIFE ESTATE AS SET FORTH IN DEED RECORDED DECEMBER 29, 1977." You ask whether this transfer is a reappraisable termination of a life estate or if it is excluded as an interspousal transfer under section 63 of the Revenue and Taxation Code.

April 14, 1987

Revenue and Taxation Code section 63 provides that

"a change in ownership shall not include any interspousal transfer, including, but not limited to:

(c) Transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation."

Therefore, the issue raised is whether the transfer of Place from to is a transfer to a former spouse "in connection with a property settlement agreement." It is our opinion that it is.

The Marital Settlement Agreement specifically grants to as her separate property an estate for life or an estate until "she removes herself from the place whichever occurs first." The Marital Settlement Agreement further grants to the Place property subject to his wife's estate. Therefore, under the Marital Settlement Agreement, is granted a remainder interest in the property as his separate property. Because the terms of the subsequent transfer were set out in the 1977 Marital Settlement Agreement, it is our opinion that the transfer is "in connection with a property settlement agreement."

In your letter, you ask us for our opinion on two additional questions concerning interspousal transfers in general. The first concerns the application of Rule 462(1)(3). Rule 462(1)(3) provides that "a change in ownership shall not include any interspousal transfer, including, but not limited to:

"(3) Transfers to a spouse or former spouse in connection with a property settlement agreement, including post-dissolution amendment thereto, or decree of dissolution of a marriage or legal separation."

You ask if a post-dissolution amendment has to be affirmed by the court or if it can be an agreement between ex-spouses.

A decree dividing community property is not subject to modification after it has become final. (In Re Marriage of Shanahan (1979) 95 Cal.App.3d 295, 297.) After the trial court has divided the property and the judgment has become final, the court loses jurisdiction to modify or alter the division made.

April 14, 1987

Thus, with respect to property, the property settlement approved by the court, entered in the judgment, and final by a lapse of time for review, is not subject to modification. (6 Witkin Summary of California Law 5058 (8th ed. 1974).) An exception to this rule arises in cases where the court expressly reserves jurisdiction to modify a property award. (Mueller v. Walker (1985) 167 Cal.App.3d 600, 605-606.) Based on the foregoing well-established case law, it is our opinion that unless the court has expressly reserved jurisdiction to modify a property award, or unless the parties themselves in their property settlement expressly reserve the right to modify the property settlement agreement, and if it appears to have been the intention of the parties to the property settlement agreement to definitely and permanently adjust their property rights, a subsequent transfer is not in connection with a property settlement agreement. Of course, the parties may subsequently make any agreement they wish, but since they are no longer married and their rights have already been fully settled, such a transfer is not in connection with the dissolution of their marriage.

Lastly, you ask the following question which was posed by your staff concerning interspousal transfers:

"The judge says that at the end of X years the property is to be sold, neither one gets the house. At the end of that time, they decide between themselves that one will sell to the other. Non-reappraisable? Reappraise 100%, 50%?"

The situation you describe generally involves a family home award pursuant to Civil Code section 4800.7. Civil Code section 4800.7 provides in pertinent part as follows:

"(a) As used in this section, 'family home award' means an order that awards temporary use of the family home to the party having custody of minor children and children for whom support is authorized under Section 206 in order to minimize the adverse impact of dissolution or legal separation on the welfare of the children.

(b) Except as otherwise agreed to by the parties in writing:

(1) A family home award may be modified or terminated at any time at the discretion of the court."

April 14, 1987

Whenever a court grants a temporary home award of community property, the noncustodial spouse's property rights under Civil Code section 4800(a) are delayed temporarily. Section 4800(a) grants the parties in a dissolution proceeding the right to an equal division of community property at the time of dissolution. The trial court's order often provides for the termination of a family home award on the following contingencies: (1) when the children reach the age of majority; or (2) when the custodial spouse remarries or otherwise brings added income to the home. Obviously, an extensive period of time could pass before these contingencies occur which would delay the noncustodial spouse's right to equal division of community property rights. (In Re Marriage of Howard (1986) 184 Cal.App.3d 1, 8.)

Under section 4800.7(b), the court expressly retains the jurisdiction to modify or terminate the family home award. Therefore, until the family home award is terminated by the court, its division as community property is not settled and final. It is our opinion, therefore, that a transfer between the spouses occurring before the property rights pertaining to the house are settled, should be excluded as an interspousal transfer.

To summarize the foregoing, it is our opinion that when (1) either the parties through an agreement, or, (2) the court through retained jurisdiction, has left a property matter open or modifiable, then a transfer between ex-spouses will be considered within the interspousal exclusion. However, where it appears to have been the intention of the parties to definitely and permanently settle their property rights and a decree of dissolution has become final, any subsequent transfers are transfers of separate property between unmarried parties and are not interspousal transfers.

I hope the foregoing analysis is helpful to you. If you have any questions or if you wish to discuss this further, please contact me.

Very truly yours,

Michele F. Hicks

Michele F. Hicks
Tax Counsel

MFH:cb
0464D